

REMARKS

Claims 1-3, 7-10, 13, 21, 26, 36-38, 40, 41, 43-49, 51-62, 73, and 74 have been amended, and Claim 35 has been cancelled, to more particularly point out and distinctly claim Applicants' invention. Support for the amendments to Claims 1-3, 36-38, and 60-62 may be found in cancelled Claim 35.

Claims 1-6, 36-38, 59, 61, and 62 have been rejected under 35 U.S.C. § 102(b) as being anticipated by or, in the alternative as obvious over, Fotos et al., U.S. Patent No. 6,365,217 ("the '217 patent") and Fotos et al., U.S. Patent No. 6,180,157 ("the '157 patent"). The Examiner maintains that the '217 patent teaches an agglomerate comprising an intense sweetener and a carrier and that the '157 patent teaches an agglomerate comprising an intense sweetener and a carrier. The Examiner noted that the claims appear to differ as to the recitation of a specific bulk density. The Examiner maintained that the bulk density would be no more than inherent and/or obvious to that of the '217 patent and the '157 patent as the same components are used.

Claims 1-74 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over the '217 patent, the '157 patent, Vieugels, U.S. Patent No. 5,902,624 ("Vieugels"), and Karwowski et al., U.S. Patent No. 4,741,910 ("Karwowski"). The Examiner maintains that the '217 patent and the '157 patent disclose an agglomerate comprising an intense sweetener and a carrier; that the '217 patent and the '157 patent disclose dextrose and maltodextrin and the convention process of agglomeration. The Examiner maintains that Vieugels discloses a composition comprising aspartame and a carrier including maltodextrin and dextrose, wherein the free bulk density is 360 kg/m^3 or lower and that Karwowski discloses an agglomerated aspartame comprising aspartame, maltodextrin and corn syrup solids. The Examiner noted that the claims differ as to the specific amounts claimed. The Examiner alleged that selection and manipulation of the amounts

of known components to obtain no more than expected results is well-within the skill of the art.

Applicants respectfully traverse the above rejections.

Applicants believe that Claims 1-6, 36-38, 59, 61, and 62 are not suggested or disclosed by the prior art. The '157 patent and the '217 patent do not teach all aspects of the claims of the subject invention. Applicants note that the invention describes a sweetener consisting essentially of an agglomerate wherein the sweetener has the same sweetness as a conventional sweetener, but a significantly smaller bulk density, conventional sweeteners typically having a bulk density of 0.66 g/cc. The Examiner maintained that the bulk density would be no more inherent and/or obvious as the same components are used as the '157 patent and the '217 patent. The bulk densities as taught by the present invention cannot be inherent or obvious in view of the prior art since the subject invention does not require the use of N-[N-(3,3-dimethylbutyl)-L- α -aspartyl]-L-phenylalanine 1- methyl ester in its process or product whereas the '157 patent and the '217 patent require the use of the compound. The N-[N-(3,3-dimethylbutyl)-L- α -aspartyl]-L-phenylalanine 1- methyl ester compound is described as having a sweetening potency 40 times greater than aspartame (see column 2, lines 35-36 of the '217 patent and the '157 patent). The specific bulk densities of a sweetener with 40 times the potency of aspartame would be different than the sweetener of the present invention, the intense sweetener of the subject invention being selected from the group consisting of sucralose, saccharin, a dipeptide sweetener, acesulfame-K, cyclamate, stevioside and combinations of two or more thereof. Column 1, lines 46-61 of the prior art patents further describe differences in physical properties between aspartame and N-[N-(3,3-dimethylbutyl)-L- α -aspartyl]-L-phenylalanine 1- methyl ester.

Further, the prior art references do not make reference to bulk densities of the products. It would not be obvious to formulate the bulk densities of the sweeteners of the

subject invention when the compounds used are not the same and the bulk densities are not described.

The Examiner maintained that it would have been obvious to a person of ordinary skill in the art at the time the invention was made, to use the claimed amounts in the '217 patent, the '157 patent, Vieugels, or Karwowski because the use of intense sweeteners, carriers and agglomeration in the sweetener art is conventional. Applicants note that it is improper to combine the teachings of the '157 patent and '217 patent with Vieugels and Karwowski. The express purposes of the '157 patent and the '217 patent are incompatible with a prior art reference that utilizes aspartame. Vieugels specifically teaches the use of aspartame having particles smaller than 100 μm (see, e.g., column 2, lines 65-67). Karwowski notes that "[a]spartame is the preferred artificial sweetener" of the invention (see column 5, lines 1-2). On the contrary, the '157 patent and the '217 patent specifically teach away from the use of aspartame. On column 2, lines 13-25 of the '157 patent and the '217 patent, it is noted that the N-[N-(3,3-dimethylbutyl)-L- α -aspartyl]-L-phenylalanine 1- methyl ester is preferred to aspartame due to its "superior sweetening potency". N-[N-(3,3-dimethylbutyl)-L- α -aspartyl]-L-phenylalanine 1- methyl ester is further described on column 2, lines 35-36 as having a sweetening potency 40 times greater than aspartame. Further, the '157 patent and the '217 patent require that N-[N-(3,3-dimethylbutyl)-L- α -aspartyl]-L-phenylalanine 1- methyl ester be used in the product and process of the invention. The Examiner may not omit an essential portion of the prior art as that would render the prior art ineffective for its purpose.

Further, Applicants note that the results of the present invention are not expected from the prior art. As noted above, the bulk densities of the present invention have not been disclosed in any of the prior art references cited by the Examiner. The prior art references do not teach a sweetener comprising an agglomerate of an intense sweetener and carrier wherein the sweetener has the same intensity of sweetness as a conventional

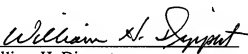
sweetener but significantly smaller bulk density. One of skill in the art would have expected use of greater amounts of carrier to fill a recognizable package. Further, one would expect that using less carrier would result in using a greater amount of sweetener which would change the intensity of sweetness of the product.

In view of the comments above and the amendments to the claims above, it should be clearly appreciated that the claims herein are patentable over the '157 patent, the '217 patent, Vieugels, and Karwowski. Accordingly, withdrawal of the rejections and allowance of the claims is believed proper.

Reconsideration and allowance of all the claims herein are respectfully requested.

Respectfully submitted,

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